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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,257	09/26/2003	James Stewart McCormick	3455-Z	4907

7590 08/28/2007  
Law Office of Jim Zegeer  
Suite 108  
801 North Pitt Street  
Alexandria, VA 22314

EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

MAIL DATE	DELIVERY MODE
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08/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/670,257

Applicant(s)

MCCORMICK ET AL.

Examiner

Joseph E. Avellino

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-20,22-34,36-39 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-20,22-34,36-39 and 41-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-4, 6-20, 22-34, 36-39, and 41-44 are presented for examination.

Claims 1, 17, 33, 34, 39, and 44 independent. The Office acknowledges the cancellation of claims 5, 21, 35, and 40.

***Claim Rejections - 35 USC § 101***

2. The Office has considered the amendments to the claims. The rejection under this statute has been withdrawn.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4, 6-20, 22-34, 36-39, and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black et al. (USPN 7,143,153) (hereinafter Black) in view of Nisbet et al. (USPN 6,834,304) (hereinafter Nisbet).

4. Referring to claim 1, Black discloses a method of monitoring resource utilization within a connection oriented network made of network elements (i.e. ATM network) (e.g. abstract; col. 28, lines 40-55), comprising the steps of:

specifying a plurality of resource types for the network elements of the network being defined by a capacity and a utilization (i.e. group similar devices together for a particular threshold group) (col. 170, lines 25-49);

providing a utilization threshold for a each type of resources (i.e. threshold level for the particular group) (col. 170, lines 25-49);

measuring the utilization of all resources at a network element (i.e. monitor network resource attributes) (col. 167, lines 15-25);

determining if the utilization of the resource is above the utilization threshold (i.e. triggers threshold violation) (col. 167, lines 25-65); and

generate a report of the threshold violators and send this report to a particular operator (i.e. user is notified as to the particular threshold violations) (col. 173, lines 9-20).

Black does not specifically disclose that the determination and generation of the report is done in response to a user's request, rather it is done periodically. In analogous art, Nisbet discloses another method of monitoring resource utilization with in a network (e.g. abstract) which discloses creating a network audit report which reads a network element file and compares parameters of the element with the threshold values and if they are out of the bounds of the threshold, create a file which holds the parameters which are out of a valid range for the particular element (e.g. abstract). It would have been obvious to one of ordinary skill in the art to combine the teaching of Black with Nisbet in order to utilize Nisbet's audit report with the monitoring capabilities

Art Unit: 2143

of Black in order to determine if the network elements of Black are ready for a network reconfiguration or upgrade as supported by Nisbet (col. 2, lines 5-10).

5. Referring to claim 2, Black discloses the resource includes bandwidth (i.e. Rx and Tx traffic) (Figure 68, resource ID no. 7312).

6. Referring to claim 3, Black discloses providing a list of resources, and wherein the step of determining whether a utilization of a resource is above the corresponding utilization threshold is carried out only with respect to resources within the list of resources (this is an inherent feature, since the switch would not check resources which the administrator does not care about, since they are not in the threshold table, they would not be checked) (Figure 68).

7. Referring to claim 4, Black discloses the threshold is provided from an operator (col. 167, line 65 to col. 168, line 14).

8. Referring to claim 5, Black discloses generating a report (the Office construes "report" as any notice which will identify a resource with any information, such as an SNMP trap) including any identified resources and presenting the report to an operator (i.e. report threshold events to SNMP manager, which sends an SNMP trap, which notifies the NMS client, which displays a notice to the user through GUI 895) (col. 169, lines 40-50).

9. Claims 6, 8-10 are rejected for similar reasons as stated above. Furthermore Black discloses generating an alarm (i.e. SNMP trap) (col. 169, lines 40-50).

10. Referring to claim 7, Black discloses the invention substantively as described in claim 5. Black does not explicitly state that the report includes the utilization of any identified resources in the report, rather a notice is sent to the user, however this information would be easily sent via an SNMP trap. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for the utilization of any identified resource in the report is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include the resource utilization level in the report in order to provide valuable information to the administrator for effectively managing the network.

11. Referring to claim 11, Black discloses determining whether a utilization of a resource is above the corresponding utilization threshold and the step of identifying each such resource are carried out repeatedly (i.e. sampling frequencies) (col. 169, lines 27-40).

12. Referring to claim 12, Black discloses pausing after the step of identifying each resource (i.e. the sampling frequency is a periodic check, and therefore it will pause until the next time the resource must be checked) (col. 169, lines 27-40).

13. Referring to claim 13, Black discloses the invention substantively as described in claim 9. Black does not explicitly state that the switch monitors the receipt of call connection establishment signals and does the determination only upon receipt of a call connection establishment signal, however this is a well known event triggered determination. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for checking the utilization threshold only upon receipt of an establishment signal is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Black to include in the sampling frequency list a choice of 'on receipt of an establishment signal' in order to eliminate needless checking of values which would not change if there is no call connection signals, thereby reducing overhead processing of the device.

14. Referring to claim 14, Black discloses the invention substantively as described in claim 13. Black does not explicitly state that an alarm is generated only when an alarm has not been generated since the utilization of the resource last rose above the threshold, however this is a well known technique in order to reduce redundant alarms. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for generating an alarm only when an alarm has not been generated is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include alarm suspensions in order to reduce the likelihood of flooding a particular management computer with redundant alarms,

thereby reducing overhead processing of the management server as well as reducing bandwidth congestion in the network.

15. Claims 15-22, 23-28, and 29-44 are rejected for similar reasons as stated above. Furthermore Black discloses that the system can identify resources that are below the corresponding utilization threshold (i.e. if attribute<5) (col. 169, lines 1-10).

### ***Response to Arguments***

16. Applicant's arguments dated August 15, 2007 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

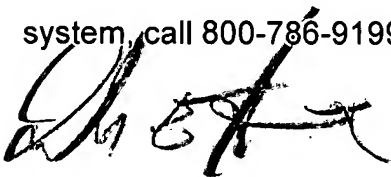
18. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. Avellino', is written over the signature line.

Joseph E. Avellino, Examiner  
August 22, 2007